IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8075 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHOBHANA VASOYA D/O. BHAGWANJIBHAI JETHABHAI VASOYA

Versus

STATE OF GUJARAT

Appearance:

MR BM MANGUKIYA for the Petitioner.

Mr. K.L.Pandya, ASSTT. GOVERNMENT PLEADER for Respondent No. 1

MS BELA A PRAJAPATI for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 04/08/2004

ORAL JUDGEMENT

Rule. Learned Assistant Government

Pleader waives service of notice of Rule on behalf of the respondent no.1. Learned advocate Ms. Bela Prajapati waives service of notice of Rule on behalf of the respondent nos. 2 and 3.

2. The present petition has been preferred under Article 226 of the Constitution of India, whereby the petitioner is seeking permission of this Court to adopt minor Shivani, the daughter of present respondent nos. 2 and 3. The learned counsel for the petitioner submitted that the petition has been preferred with a view to obtain permission of this Court to adopt minor girl Shivani who is the daughter of respondent nos. 2 and 3. It is submitted by the learned counsel for the petitioner that the petitioner is the sister of respondent no. 3 (who is married to respondent no. 2.)
The petitioner wants to adopt minor Shivani who is the daughter of sister of the petitioner. The petitioner is running business in the name of LA-V-JAY.INC situated at 2465, 27th AV.,SW,Vero Beach, Florida. The petitioner is a tax payer in USA and is 51% shareholder of the said company. The income of the last six months has also been reflected at Annexure "A" to the petition. The gross turnover of six months from January, 2004 to June, 2004 of the said business of the petitioner is 6,55,260.31 US Dollars. Details have been given in paras 8,9 and 10 of the petition as to the income of the petitioner and of various bank accounts in India. It is also contended by the learned counsel for the petitioner that the sister of the petitioner (respondent no.3) as well as the husband of the sister of the petitioner (respondent no.2) are ready and willing to allow adoption of their minor girl Shivani to the petitioner. Shivani is born on December 11, 1988. The petitioner being a citizen of USA and is well to do, a prosperous future will be there of minor Shivani if she is allowed to be adopted by the petitioner. It is also contended by the learned counsel for the petitioner that both father (respondent no.2) as well as mother (respondent no.3) of minor girl Shivani who are biological parents have no objection for the adoption by the petitioner. On the contrary, they are ready and willing for adoption of minor girl Shivani by the petitioner. The respondent no. 3 has also filed an affidavit to the effect that he is the biological father of minor girl Shivani and narrating other details. The affidavit is taken on record.

3. Looking to the facts of the case, a notice was issued to the respondents. Both respondent nos. 2 as well as respondent no. 3 have remained

present in the court and have tendered their affidavit-in-reply, whereby they have consented for the adoption of minor girl Shivani by the petitioner. It is also admitted by the biological parents of the minor girl Shivani that financial position of the petitioner is known to them. The petitioner is also known to the respondent nos. 2 and 3. They are relatives and they have no objection if this Court allows adoption of minor girl Shivani by the petitioner.

4. I have perused the judgment delivered by the Hon'ble Supreme Court in the case of Lakshmi Kant Pandey vs. Union of India reported in 1984(2)SCC, 244, paragraph 9 whereof has prescribed in detail the procedure to be followed for adoption of a guardian of a minor under Guardian and Wards Act, 1890. However, in para-11 of the said judgment, it is made clear, which reads as under:

"11. We may make it clear at the outset that we are not concerned here with cases of adoption of children living with their biological parents, for in such class of cases, the biological parents would be the best persons to decide whether to give their child in adoption to foreign parents. It is only in those cases where the children sought to be taken in adoption are destitute or abandoned and are living in social or child welfare centres that it is necessary to consider what normative and procedural safeguards should be forged for protecting their interest and promoting their welfare."

Therefore, this makes it is abundantly clear that once biological parents of a minor are in existence and if they are giving consent for giving in adoption, their child, to a person who is known to them, the procedure referred to in the judgment is not required to be followed. Similarly, in the case of Anokha (Smt) vs. State of Rajasthan and others reported in (2004) 1, SCC, 382, the Hon'ble Supreme Court has referred in detail, the procedure for adoption by a foreigner. At the same time, paragraphs 8 and 10 make an exception to the general rule of procedure envisaged in the judgment. Once biological parents of the child are ready and willing to give their child in adoption, the procedure as envisaged in the judgment is not required to be followed.

5. In view of the aforesaid facts and circumstances and especially when the biological parents have filed their affidavit to the effect that they have

consented for adoption of their minor girl Shivani by the petitioner, in my opinion, this Court should permit the petitioner to adopt the minor girl Shivani.

6. In the result, this petition is allowed. The petitioner is hereby permitted to adopt minor girl Shivani, daughter of respondent nos. 2 and 3. Rule made absolute accordingly with no order as to costs.

(D.N.Patel,J)

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